

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
IN RE MERRILL LYNCH & CO., INC. ::  
SECURITIES, DERIVATIVE AND ERISA ::  
LITIGATION ::  
:: Master File No.:  
:: 07 cv 9633 (JSR) (DFE)  
::  
:: **NOTICE OF DEFENDANT E.**  
:: **STANLEY O'NEAL'S MOTION TO**  
:: **DISMISS THE VERIFIED THIRD**  
This Document Relates To: :: **AMENDED SHAREHOLDER**  
Derivative Action, 07 cv 9696 (JSR) (DFE) :: **DERIVATIVE AND CLASS ACTION**  
:: **COMPLAINT**  
::  
-----X

PLEASE TAKE NOTICE that upon: (i) the Verified Third Amended Shareholder Derivative and Class Action Complaint in the above-captioned action; (ii) the accompanying Declaration of Michael J. Chepiga dated September 21, 2009 and the exhibit attached thereto; (iii) the accompanying Memorandum of Law in Support E. Stanley O'Neal's Motion to Dismiss Plaintiff's Verified Third Amended Shareholder Derivative and Class Action Complaint; (iv) the previously filed Declaration of Jay B. Kasner dated July 18, 2008 and the exhibits thereto (Master Docket #55); (v) the previously filed Memorandum of Law in Support of E. Stanley O'Neal's Motion to Dismiss the Consolidated Class Action Complaint dated July 21, 2008 (Master Docket # 59); (vi) the previously filed Memorandum of Law in Support of Merrill Lynch's Motion to Dismiss the Second Amended Derivative Complaint dated November 7, 2008 (Master Docket # 144); (vii) Bank of America Corporation's Memorandum of Law in Support of its Motion to Dismiss Counts I-XII of the Verified Third Amended Shareholder Derivative and Class Action Complaint dated September 21, 2009; (viii) Memorandum of Law in Support of the Former Merrill Lynch Outside Directors Defendants' Motion to Dismiss Plaintiffs' Verified

Third Amended Shareholder Derivative and Class Action Complaint dated September 21, 2009; (ix) Memorandum of Law in Support of the Motion of Defendant Jeffrey N. Edwards to Dismiss the Verified Third Amended Shareholder Derivative and Class Action Complaint dated September 21, 2009; (x) Memorandum of Law in Support of Defendant Ahmass L. Fakahany's Motion to Dismiss the Verified Third Amended Shareholder Derivative and Class Action Complaint dated September 21, 2009; (xi) Memorandum of Law in Support of Defendant Gregory J. Fleming's Motion to Dismiss the Verified Third Amended Shareholder Derivative and Class Action Complaint dated September 21, 2009; and (xii) all prior papers and proceedings herein, Defendant E. Stanley O'Neal will move this Court pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6), before the Honorable Jed S. Rakoff, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, on a date and at a time designated by the Court, for an Order dismissing the Verified Third Amended Shareholder Derivative and Class Action Complaint with prejudice and for such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that opposition papers shall be served and filed on or before October 19, 2009; reply papers shall be served and filed on or before November 2, 2009; and oral argument shall be held on November 9, 2009 at 3:00 p.m.

Dated: New York, New York  
September 21, 2009

SIMPSON THACHER & BARTLETT LLP

**By:** s/ Michael J. Chepiga  
Michael J. Chepiga (mchepiga@stblaw.com)  
Paul C. Curnin (pcurnin@stblaw.com)  
Jason S. Stone (jstone@stblaw.com)  
Sarah L. Dunn (sdunn@stblaw.com)

425 Lexington Avenue  
New York, New York 10017  
Telephone: (212) 455-2000  
Facsimile: (212) 455-2502

*Attorneys for Defendant E. Stanley O'Neal*